

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 750 of 1997

in

SPECIAL CIVIL APPLICATION No. 1312 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE C.K. THAKKER  
and  
MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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RAJARAM BADRIPRASAD

Versus

REGIONAL DIRECTOR

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Appearance:

MR MUKESH R SHAH for Petitioner  
M/S TRIVEDI & GUPTA for Respondent No. 1  
MR PB BHATT, AGP for State

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CORAM : MR.JUSTICE C.K.THAKKER and  
MISS JUSTICE R.M.DOSHIT  
Date of decision: 22/09/97

ORAL JUDGEMENT {Per : Thakkar, J.}

This appeal is filed against the judgment and order passed by the learned Single Judge in Special Civil Application No. 131 of 1989, decided on April 10, 1996. By the said judgment, the petition filed by the present respondent respondent No. 3 came to be allowed.

It was the case of respondent No. 3, who was the original petitioner, that he was appointed by the appellant - Agriculture Produce Market Committee, Visnagar on May 21, 1986. His appointment was continued from time to time. Not only that but it was approved by the Director of Agriculture & Rural Finance of the State of Gujarat. By an impugned Order dated December 8, 1988, his services came to be terminated. He, therefore, approached this Court inter alia contending that his appointment was permanent and he was a confirmed employee, and hence, his service could not have been terminated by the impugned Order at Annexure "H" on December 8, 1988. It was contended that the order was penal and punitory in nature and even if it is held that the appointment of the petitioner was not permanent, then also, such an order could not have been passed without holding departmental inquiry and without finding him guilty of any misconduct.

After hearing the parties, the petition was allowed by the learned Single Judge and it was held that the order of termination of services passed by the Appellate-Market Committee was illegal and contrary to law. The learned Single Judge, therefore, quashed and set-aside that order. IT was that order which has been challenged by way of the present Letters Patent Appeal.

At the time of hearing of L.P.A., attention of the Court was invited to the following observations made by the learned Single Judge in the impugned order :-

"...Appointment on probation would mean appointment made on substantive basis. It is a permanent appointment. Appointment on substantive basis is appointment made after following the procedure laid down under the relevant Service Rules or Regulations, as the case may be, on a permanent post. It is not a case where the petitioner's appointment is irregular appointment or back-door entry. It is an appointment made after regular selection, and naturally an appointment on probation, subject to confirmation. Merely because the petitioner was

appointed on probation, it does not mean that it is a temporary appointment. It is a permanent appointment."

Division Bench of this court issued notice and today we have heard the learned counsel for respective parties.

In the facts and circumstances of the case, in our opinion, looking to the order passed at Annexure "H" on December 8, 1988, it is clear that by setting aside the said order, no illegality has been committed by the learned Single Judge. So far as the order of termination is concerned, it clearly casts stigma on the petitioner and it is an admitted fact that the said order was not passed in consonance with the principles of natural justice and fair-play. No departmental inquiry was initiated against the respondent No. 3 herein, and hence, we do not see any reason to interfere with the final order passed by the learned Single Judge, though in our opinion, in the facts and circumstances of the case, larger observations were not necessary.

Regarding final part of the order, the learned counsel for appellant submitted that so far as reinstatement is concerned, in view of the order passed by the learned Single Judge and confirmed by us, it must follow. Regarding backwages, however, the original petitioner has filed an affidavit in Civil Application No. 6772 of 1996. In paragraph Nos. 2 and 3, it is stated thus;

"2. I say that I had worked in the office of the Regional Deputy Director of Census Operation, Ministry of Home Affairs, Government of India at Mehsana, as a Checker. I was drawing Rs. 1050/= as consolidated salary. I have worked during the following period :-

- (i) 11th March 1991 to 10th March, 1992.
- (ii) 16th March, 1992 to 8th May, 1992.
- (iii) 2nd July, 1992 to 31st July, 1992.

I have drawn the total emoluments of Rs. 17,850/= during this period. A certificate issued by the Regional Deputy Director of Census Operation is annexed herewith and marked as Annexure-I showing the period which I have worked.

3. Similarly, I have worked as Manager-cum-Rector for about 11 months from 1st June, 1995 to 30th April, 1996, at a consolidated salary of Rs. 2500/= per month and accordingly, I have earned Rs. 27,500/= by way of salary for having worked during this period as Manager-cum-Rector. Annexured hereto and marked as Annexure-II is the copy of the certificate showing the same."

Looking to the above paragraphs, it is clear that the respondent no. 3 was gainfully employed and had drawn an amount of Rs. 45,350/= and in these circumstances, from the backwages, the said amount is ordered to be deleted. So far as the rest of the judgement is concerned, it is not disturbed. Appeal stands partly allowed.